

§1 –
C.54:10A-5.39b
§2 - C.54A:4-12b
§3 - T&E & Notes
to 54:10A-5.39b
& 54A:4-12b
§4 - T&E & Note
to 54:10A-5.39b
§5 - Repealer

P.L. 2018, CHAPTER 56, *approved July 3, 2018*
Senate, No. 122 (*Third Reprint*)

1 AN ACT providing a credit against the corporation business tax and
2 the gross income tax for certain expenses incurred for the
3 production of certain films and digital media content and
4 designated as the Garden State Film and Digital Media Jobs Act,
5 supplementing P.L.1945, c.162 (C.54:10A-1 et seq.) and Title
6 54A of the New Jersey Statutes and repealing various parts of
7 the statutory law¹.
8

9 **BE IT ENACTED** by the Senate and General Assembly of the State
10 of New Jersey:
11

12 1. a. (1) A taxpayer, upon approval of an application to the
13 authority and the director, shall be allowed a credit against the tax
14 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in
15 an amount equal to 30 percent of the qualified film production
16 expenses of the taxpayer during a privilege period commencing on
17 or after July 1, 2018 but before July 1, 2023, provided that:

18 (a) at least 60 percent of the total film production expenses,
19 exclusive of post-production costs, of the taxpayer are incurred for
20 services performed, and goods purchased through vendors
21 authorized to do business, in New Jersey, or the qualified film
22 production expenses of the taxpayer during the privilege period
23 exceed \$1,000,000 per production;

24 (b) principal photography of the film commences within the
25 earlier of 180 days from the date of the original application for the
26 tax credit, or 150 days from the date of approval of the application
27 for the tax credit;

28 (c) the film includes, when determined to be appropriate by the
29 commission, at no cost to the State, marketing materials promoting
30 this State as a film and entertainment production destination, which

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted March 13, 2018.

²Assembly AAP committee amendments adopted April 5, 2018.

³Senate amendments adopted in accordance with Governor's
recommendations June 7, 2018.

1 materials shall include placement of a “Filmed in New Jersey” or
2 “Produced in New Jersey” statement ¹, or an approved logo
3 approved by the Commission,¹ in the end credits of the film;

4 (d) the taxpayer submits a tax credit verification report prepared
5 by an independent certified public accountant licensed in this State
6 in accordance with subsection f. of this section; and

7 (e) the taxpayer complies with the withholding requirements
8 provided for payments to loan out companies and independent
9 contractors in accordance with subsection g. of this section.

10 (2) Notwithstanding the provisions of paragraph (1) of this
11 subsection a. to the contrary, the tax credit allowed pursuant to this
12 subsection against the tax imposed pursuant to section 5 of
13 P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to ¹~~40~~
14 percent for the qualified film production expenses of the taxpayer
15 during a privilege period that represent expenses of the taxpayer
16 incurred in an eligible municipality for the production of a film,
17 including post-production costs of the taxpayer incurred in an
18 eligible municipality ~~35 percent of the qualified film production~~
19 expenses of the taxpayer during a privilege period that are incurred
20 for services performed and tangible personal property purchased
21 through vendors whose primary place of business is located in
22 Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester,
23 Mercer or Salem County¹.

24 b. (1) A taxpayer, upon approval of an application to the
25 authority and the director, shall be allowed a credit against the tax
26 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in
27 an amount equal to 20 percent of the qualified digital media content
28 production expenses of the taxpayer during a privilege period
29 commencing on or after July 1, 2018 but before July 1, 2023,
30 provided that:

31 (a) at least \$2,000,000 of the total digital media content
32 production expenses of the taxpayer are incurred for services
33 performed, and goods purchased through vendors authorized to do
34 business, in New Jersey;

35 (b) at least 50 percent of the qualified digital media content
36 production expenses of the taxpayer are for wages and salaries paid
37 to full-time or full-time equivalent employees in New Jersey;

38 (c) the taxpayer submits a tax credit verification report prepared
39 by an independent certified public accountant licensed in this State
40 in accordance with subsection f. of this section; and

41 (d) the taxpayer complies with the withholding requirements
42 provided for payments to loan out companies and independent
43 contractors in accordance with subsection g. of this section.

44 (2) Notwithstanding the provisions of paragraph (1) of this
45 subsection b. to the contrary, the tax credit allowed pursuant to this
46 subsection against the tax imposed pursuant to section 5 of
47 P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to ¹~~40~~

1 percent for the qualified digital media content production expenses
2 of the taxpayer during a privilege period that represent expenses of
3 the taxpayer incurred in an eligible municipality for the production
4 of digital media content] 25 percent of the qualified digital media
5 content production expenses of the taxpayer during a privilege
6 period that are incurred for services performed and tangible
7 personal property purchased through vendors whose primary place
8 of business is located in Atlantic, Burlington, Camden, Cape May,
9 Cumberland, Gloucester, Mercer, or Salem County¹.

10 c. No tax credit shall be allowed pursuant to this section for
11 any costs or expenses included in the calculation of any other tax
12 credit or exemption granted pursuant to a claim made on a tax
13 return filed with the director, or included in the calculation of an
14 award of business assistance or incentive, for a period of time that
15 coincides with the privilege period for which a tax credit authorized
16 pursuant to this section is allowed. The order of priority ¹[of the
17 application of] in which¹ the tax credit allowed pursuant to this
18 section and any other tax credits allowed by law ¹may be taken¹
19 shall be as prescribed by the director. The amount of the tax credit
20 applied under this section against the tax imposed pursuant to
21 section 5 of P.L.1945, c.162 (C.54:10A-5), for a privilege period,
22 when taken together with any other payments, credits, deductions,
23 and adjustments allowed by law shall not reduce the tax liability of
24 the taxpayer to an amount less than the statutory minimum provided
25 in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). The
26 amount of the tax credit otherwise allowable under this section
27 which cannot be applied for the privilege period due to the
28 limitations of this subsection or under other provisions of P.L.1945,
29 c.162 (C.54:10A-1 et seq.) may be carried forward, if necessary, to
30 the seven privilege periods following the privilege period for which
31 the tax credit was allowed.

32 d. A taxpayer, with an application for a tax credit provided for
33 in subsection a. or subsection b. of this section, may apply to the
34 authority and the director for a tax credit transfer certificate in lieu
35 of the taxpayer being allowed any amount of the tax credit against
36 the tax liability of the taxpayer. The tax credit transfer certificate,
37 upon receipt thereof by the taxpayer from the authority and the
38 director, may be sold or assigned, in full or in part, to any other
39 taxpayer that may have a tax liability under the "Corporation
40 Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or
41 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in
42 exchange for private financial assistance to be provided by the
43 purchaser or assignee to the taxpayer that has applied for and been
44 granted the tax credit. The tax credit transfer certificate provided to
45 the taxpayer shall include a statement waiving the taxpayer's right
46 to claim that amount of the tax credit against the tax imposed
47 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) that the

1 taxpayer has elected to sell or assign. The sale or assignment of any
2 amount of a tax credit transfer certificate allowed under this section
3 shall not be exchanged for consideration received by the taxpayer of
4 less than 75 percent of the transferred tax credit amount. Any
5 amount of a tax credit transfer certificate used by a purchaser or
6 assignee against a tax liability under P.L.1945, c.162 (C.54:10A-1
7 et seq.) shall be subject to the same limitations and conditions that
8 apply to the use of a tax credit pursuant to subsection c. of this
9 section. Any amount of a tax credit transfer certificate obtained by
10 a purchaser or assignee under subsection a. or subsection b. of this
11 section may be applied against the purchaser's or assignee's tax
12 liability under N.J.S.54A:1-1 et seq. and shall be subject to the
13 same limitations and conditions that apply to the use of a credit
14 pursuant to subsections c. and d. of section 2 of P.L. , c. (C.)
15 (pending before the Legislature as this bill).

16 e. (1) The value of tax credits, including tax credits allowed
17 through the granting of tax credit transfer certificates, approved by
18 the director and the authority pursuant to subsection a. of this
19 section and pursuant to subsection a. of section 2 of P.L. ,
20 c. (C.) (pending before the Legislature as this bill) shall not
21 exceed a cumulative total of \$75,000,000 in fiscal year 2019 and in
22 each fiscal year thereafter prior to fiscal year 2024 to apply against
23 the tax imposed pursuant to section 5 of P.L.1945, c.162
24 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey
25 Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative
26 total amount of tax credits, and tax credit transfer certificates,
27 allowed to taxpayers for privilege periods or taxable years
28 commencing during a single fiscal year under subsection a. of this
29 section and subsection a. of section 2 of P.L. , c. (C.)
30 (pending before the Legislature as this bill) exceeds the amount of
31 tax credits available in that fiscal year, then taxpayers who have
32 first applied for and have not been allowed a tax credit or tax credit
33 transfer certificate amount for that reason shall be allowed, in the
34 order in which they have submitted an application, the amount of
35 tax credit or tax credit transfer certificate on the first day of the next
36 succeeding fiscal year in which tax credits and tax credit transfer
37 certificates under subsection a. of this section and subsection a. of
38 section 2 of P.L. , c. (C.) (pending before the Legislature as
39 this bill) are not in excess of the amount of credits available.

40 (2) The value of tax credits, including tax credits allowed
41 through the granting of tax credit transfer certificates, approved by
42 the authority and the director pursuant to subsection b. of this
43 section and pursuant to subsection b. of section 2 of P.L. ,
44 c. (C.) (pending before the Legislature as this bill) shall not
45 exceed a cumulative total of \$10,000,000 in fiscal year 2019 and in
46 each fiscal year thereafter prior to fiscal year 2024 to apply against
47 the tax imposed pursuant to section 5 of P.L.1945, c.162
48 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey

1 Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the total amount
2 of tax credits and tax credit transfer certificates allowed to
3 taxpayers for privilege periods or taxable years commencing during
4 a single fiscal year under subsection b. of this section and
5 subsection b. of section 2 of P.L. , c. (C.) (pending before
6 the Legislature as this bill) exceeds the amount of tax credits
7 available in that year, then taxpayers who have first applied for and
8 have not been allowed a tax credit or tax credit transfer certificate
9 amount for that reason shall be allowed, in the order in which they
10 have submitted an application, the amount of tax credit or tax credit
11 transfer certificate on the first day of the next succeeding fiscal year
12 in which tax credits and tax credit transfer certificates under
13 subsection b. of this section and subsection b. of section 2 of
14 P.L. , c. (C.) (pending before the Legislature as this bill) are
15 not in excess of the amount of credits available.

16 f. A taxpayer shall submit to the authority and the director a
17 report prepared by an independent certified public accountant
18 licensed in this State to verify the taxpayer's tax credit claim
19 following the completion of the production. The report shall be
20 ²~~based on a compliance audit conducted~~ prepared² by the
21 independent certified public accountant pursuant to ²~~procedures~~
22 agreed upon by the taxpayer, the independent certified public
23 accountant, and the authority and the director ²~~agreed upon~~
24 procedures prescribed by the authority and the director²; and shall
25 include such information and documentation as shall be determined
26 to be necessary by the authority and the director to substantiate the
27 qualified film production expenses or the qualified digital media
28 content production expenses of the taxpayer. Upon receipt of the
29 report, the authority and the director shall review the findings of the
30 independent certified public accountant's ²~~compliance audit~~
31 report², and shall make a determination as to the qualified film
32 production expenses or the qualified digital media content
33 production expenses of the taxpayer. The determination shall be
34 provided in writing to the taxpayer, and a copy of the written
35 determination shall be included in the filing of a return that includes
36 a claim for a tax credit allowed pursuant to this section.

37 g. A taxpayer shall withhold from each payment to a loan out
38 company or to an independent contractor an amount equal to 6.37
39 percent of the payment otherwise due. The amounts withheld shall
40 be deemed to be withholding of liability pursuant to the "New
41 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the
42 taxpayer shall be deemed to have the rights, duties, and
43 responsibilities of an employer pursuant to chapter 7 of Title 54A of
44 the New Jersey Statutes. The director shall allocate the amounts
45 withheld for a taxable year to the accounts of the individuals who
46 are employees of a loan out company in proportion to the
47 employee's payment by the loan out company in connection with a

1 trade, profession, or occupation carried on in this State or for the
2 rendition of personal services performed in this State during the
3 taxable year. A loan out company that reports its payments to
4 employees in connection with a trade, profession, or occupation
5 carried on in this State or for the rendition of personal services
6 performed in this State during a taxable year shall be relieved of its
7 duties and responsibilities as an employer pursuant to chapter 7 of
8 Title 54A of the New Jersey Statutes for the taxable year for any
9 payments relating to the payments on which the taxpayer withheld.

10 h. As used in this section:

11 “Authority” means the New Jersey Economic Development
12 Authority.

13 “Business assistance or incentive” means “business assistance or
14 incentive” as that term is defined pursuant to section 1 of P.L.2007,
15 c.101 (C.54:50-39).

16 “Commission” means the Motion Picture and Television
17 Development Commission.

18 “Digital media content” means any data or information that is
19 produced in digital form, including data or information created in
20 analog form but reformatted in digital form, text, graphics,
21 photographs, animation, sound ^{1,1} and video content. “Digital media
22 content” does not mean content offerings generated by the end user
23 (including postings on electronic bulletin boards and chat rooms);
24 content offerings comprised primarily of local news, events,
25 weather ^{1,1} or local market reports; public service content;
26 electronic commerce platforms (such as retail and wholesale
27 websites); websites or content offerings that contain obscene
28 material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3;
29 websites or content that are produced or maintained primarily for
30 private, industrial, corporate ^{1,1} or institutional purposes; or digital
31 media content acquired or licensed by the taxpayer for distribution
32 or incorporation into the taxpayer's digital media content.

33 ¹【“Eligible municipality” means a municipality in this State that
34 has experienced the closure of at least two casino hotel facilities
35 that had been licensed and operated, within the boundaries of the
36 municipality, in accordance with the laws of this State.】¹

37 “Film” means a feature film, a television series ^{1,1} or a television
38 show of 22 minutes or more in length, intended for a national
39 audience, or a television series or a television show of 22 minutes
40 or more in length intended for a national or regional audience,
41 including, but not limited to, a game show, award show, or other
42 gala event filmed and produced at a nonprofit arts and cultural
43 venue receiving State funding. “Film” shall not include a
44 production featuring news, current events, weather ^{1,1} and market
45 reports or public programming, talk show, ³or³ sports event, ³【or
46 reality show,】³ a production that solicits funds, a production
47 containing obscene material as defined under N.J.S.2C:34-2 and

1 N.J.S.2C:34-3, or a production primarily for private, industrial,
2 corporate ^{1,1} or institutional purposes ³, or a reality show, except if
3 the production company of the reality show owns, leases, or
4 otherwise occupies a production facility of no less than 20,000
5 square feet of real property for a minimum term of twenty-four (24)
6 months, and invests no less than \$3,000,000 in such a facility within
7 a designated enterprise zone established pursuant to the “New
8 Jersey Urban Enterprise Zones Act,” P.L.1983, c.303 (C.52:27H-60
9 et al.), or a UEZ-impacted business district established pursuant to
10 section 3 of P.L.2001, c.347 (C.52:27H-66.2)³. “Film” shall not
11 include ¹[a game show,] an¹ award show ¹[,] ¹ or other gala event
12 that is not filmed and produced at a nonprofit arts and cultural
13 venue receiving State funding.

14 “Full-time or full-time equivalent employee” means an
15 individual employed by the taxpayer for consideration for at least
16 35 hours a week, or who renders any other standard of service
17 generally accepted by custom or practice as full-time or full-time
18 equivalent employment, whose wages are subject to withholding as
19 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1
20 et seq., or who is a partner of a taxpayer, who works for the
21 partnership for at least 35 hours a week, or who renders any other
22 standard of service generally accepted by custom or practice as full-
23 time or full-time equivalent employment, and whose distributive
24 share of income, gain, loss, or deduction, or whose guaranteed
25 payments, or any combination thereof, is subject to the payment of
26 estimated taxes, as provided in the “New Jersey Gross Income Tax
27 Act,” N.J.S.54A:1-1 et seq. “Full-time or full-time equivalent
28 employee” shall not include an individual who works as an
29 independent contractor or on a consulting basis for the taxpayer.

30 “Highly compensated individual” means an individual who
31 directly or indirectly receives compensation in excess of
32 ¹[\$1,500,000] \$500,000¹ for the performance of services used
33 directly in a production. An individual receives compensation
34 indirectly when the taxpayer pays a loan out company that, in turn,
35 pays the individual for the performance of services.

36 “Independent contractor” means an individual treated as an
37 independent contractor for federal and State tax purposes who is
38 contracted with by the taxpayer for the performance of services
39 used directly in a production.

40 “Loan out company” means a personal service corporation or
41 other entity that is contracted with by the taxpayer to provide
42 specified individual personnel, such as artists, crew, actors,
43 producers, or directors for the performance of services used directly
44 in a production. “Loan out company” does not include entities
45 contracted with by the taxpayer to provide goods or ancillary
46 contractor services such as catering, construction, trailers,
47 equipment, or transportation.

1 “Partnership” means an entity classified as a partnership for
2 federal income tax purposes.

3 “Post-production costs” means the costs of the phase of
4 production of a film that follows principal photography, in which
5 raw footage is cut and assembled into a finished film with sound
6 synchronization and visual effects.

7 “Pre-production costs” means the costs of the phase of
8 production of a film that precedes principal photography, in which a
9 detailed schedule and budget for the production is prepared, the
10 script and location is finalized, and contracts with vendors are
11 negotiated.

12 “Qualified digital media content production expenses” means an
13 expense incurred in New Jersey for the production of digital media
14 content. “Qualified digital media content production expenses”
15 shall include but shall not be limited to ¹ wages and salaries of
16 individuals employed in the production of digital media content on
17 which the tax imposed by the “New Jersey Gross Income Tax Act,”
18 N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of
19 computer software and hardware, data processing, visualization
20 technologies, sound synchronization, editing, and the rental of
21 facilities and equipment. Payment made to a loan out company or
22 to an independent contractor shall not be a “qualified digital media
23 content production expense” unless the payment is made in
24 connection with a trade, profession, or occupation carried on in this
25 State or for the rendition of personal services performed in this
26 State and the taxpayer has made the withholding required by
27 subsection g. of this section. “Qualified digital media content
28 production expenses” shall not include expenses incurred in
29 marketing, promotion, or advertising digital media or other costs
30 not directly related to the production of digital media content.
31 Costs related to the acquisition or licensing of digital media content
32 by the taxpayer for distribution or incorporation into the taxpayer's
33 digital media content shall not be “qualified digital media content
34 production expenses.”

35 “Qualified film production expenses” means an expense incurred
36 in New Jersey for the production of a film including pre-production
37 costs and post-production costs incurred in New Jersey. “Qualified
38 film production expenses” shall include but shall not be limited to:
39 wages and salaries of individuals employed in the production of a
40 film on which the tax imposed by the “New Jersey Gross Income
41 Tax Act,” N.J.S.54A:1-1 et seq. has been paid or is due; and the
42 costs for tangible personal property used, and services performed,
43 directly and exclusively in the production of a film, such as
44 expenditures for film production facilities, props, makeup,
45 wardrobe, film processing, camera, sound recording, set
46 construction, lighting, shooting, editing, and meals. Payment made
47 to a loan out company or to an independent contractor shall not be a
48 “qualified film production expense” unless the payment is made in

1 connection with a trade, profession, or occupation carried on in this
2 State or for the rendition of personal services performed in this
3 State and the taxpayer has made the withholding required by
4 subsection g. of this section. “Qualified film production expenses”
5 shall not include: expenses incurred in marketing or advertising a
6 film; and payment in excess of ~~1~~ **1** ~~[\$1,500,000]~~ **1** ~~\$500,000~~¹ to a highly
7 compensated individual for costs for a story, script, or scenario used
8 in the production of a film and wages or salaries or other
9 compensation for writers, directors, including music directors,
10 producers, and performers, other than background actors with no
11 scripted lines.

12 “Total digital media content production expenses” means costs
13 for services performed and property used or consumed in the
14 production of digital media content.

15 “Total film production expenses” means costs for services
16 performed and tangible personal property used or consumed in the
17 production of a film.

18 ²i. A business that is not a “taxpayer” as defined and used in the
19 “Corporation Business Tax Act (1945)” P.L.1945, c.162 (C.54:10A-
20 1 et seq.) and therefore is not directly allowed a credit under this
21 section, but is a business entity that is classified as a partnership for
22 federal income tax purposes and is ultimately owned by a business
23 entity that is a “corporation” as defined in subsection (c) of section
24 4 of P.L.1945, c.162 (C.54:10A-4), or a limited liability company
25 formed under the “Revised Uniform Limited Liability Company
26 Act,” P.L.2012, c.50 (C.42:2C-1 et seq.), or qualified to do business
27 in this State as a foreign limited liability company, with one
28 member, and is wholly owned by the business entity that is a
29 “corporation” as defined in subsection (c) of section 4 of P.L.1945,
30 c.162 (C.54:10A-4), but otherwise meets all other requirements of
31 this section, shall be considered an eligible applicant and “taxpayer”
32 as that term is used in this section.²

33
34 2. a. (1) A taxpayer, upon approval of an application to the
35 authority and the director, shall be allowed a credit against the tax
36 otherwise due for the taxable year under the “New Jersey Gross
37 Income Tax Act,” N.J.S.54A:1-1 et seq., in an amount equal to 30
38 percent of the qualified film production expenses of the taxpayer
39 during a taxable year commencing on or after July 1, 2018 but
40 before July 1, 2023, provided that:

41 (a) at least 60 percent of the total film production expenses,
42 exclusive of post-production costs, of the taxpayer are incurred for
43 services performed, and goods purchased through vendors
44 authorized to do business, in New Jersey, or the qualified film
45 production expenses of the taxpayer during the taxable year exceed
46 \$1,000,000 per production;

47 (b) principal photography of the film commences within the
48 earlier of 180 days from the date of the original application for the

1 tax credit, or 150 days from the date of approval of the application
2 for the tax credit;

3 (c) the film includes, when determined to be appropriate by the
4 commission, at no cost to the State, marketing materials promoting
5 this State as a film and entertainment production destination, which
6 materials shall include placement of a “Filmed in New Jersey” or
7 “Produced in New Jersey” statement ¹, or an appropriate logo
8 approved by the Commission,¹ in the end credits of the film;

9 (d) the taxpayer submits a tax credit verification report prepared
10 by an independent certified public accountant licensed in this State
11 in accordance with subsection ¹~~【f.】~~ g.¹ of this section; and

12 (e) the taxpayer complies with the withholding requirements
13 provided for payments to loan out companies and independent
14 contractors in accordance with subsection ¹~~【g.】~~ h.¹ of this section.

15 (2) Notwithstanding the provisions of paragraph (1) of this
16 subsection a. to the contrary, the tax credit allowed pursuant to this
17 subsection against the tax otherwise due for the taxable year under
18 the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.,
19 shall be in an amount equal to ¹~~【40 percent for the qualified film~~
20 ~~production expenses of the taxpayer during a taxable year that~~
21 ~~represent expenses of the taxpayer incurred in an eligible~~
22 ~~municipality for the production of a film, including post-production~~
23 ~~costs of the taxpayer incurred in an eligible municipality】~~ 35
24 percent of the qualified film production expenses of the taxpayer
25 during a taxable year that are incurred for services performed and
26 tangible personal property purchased through vendors whose
27 primary place of business is located in Atlantic, Burlington,
28 Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem
29 County¹.

30 b. (1) A taxpayer, upon approval of an application to the
31 authority and the director, shall be allowed a credit against the tax
32 otherwise due for the taxable year under the “New Jersey Gross
33 Income Tax Act,” N.J.S.54A:1-1 et seq., in an amount equal to 20
34 percent of the qualified digital media content production expenses
35 of the taxpayer during a taxable year commencing on or after July
36 1, 2018 but before July 1, 2023, provided that:

37 (a) at least \$2,000,000 of the total digital media content
38 production expenses of the taxpayer are incurred for services
39 performed, and goods purchased through vendors authorized to do
40 business, in New Jersey;

41 (b) at least 50 percent of the qualified digital media content
42 production expenses of the taxpayer are for wages and salaries paid
43 to full-time or full-time equivalent employees in New Jersey;

44 (c) the taxpayer submits a tax credit verification report prepared
45 by an independent certified public accountant licensed in this State
46 in accordance with subsection g. of this section; and

1 (d) the taxpayer complies with the withholding requirements
2 provided for payments to loan out companies and independent
3 contractors in accordance with subsection h. of this section.

4 (2) Notwithstanding the provisions of paragraph (1) of this
5 subsection b. to the contrary, the tax credit allowed pursuant to this
6 subsection against the tax otherwise due for the taxable year under
7 the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.,
8 shall be in an amount equal to ¹[40 percent for the qualified digital
9 media content production expenses of the taxpayer during a taxable
10 year that represent expenses of the taxpayer incurred in an eligible
11 municipality for the production of digital media content] 25 percent
12 for the qualified digital media content production expenses of the
13 taxpayer during a taxable year that are incurred for services
14 performed and tangible personal property purchased through
15 vendors whose primary place of business is located in Atlantic,
16 Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer,
17 or Salem County¹.

18 c. No tax credit shall be allowed pursuant to this section for
19 any costs or expenses included in the calculation of any other tax
20 credit or exemption granted pursuant to a claim made on a tax
21 return filed with the director, or included in the calculation of an
22 award of business assistance or incentive, for a period of time that
23 coincides with the taxable year for which a tax credit authorized
24 pursuant to this section is allowed. The order of priority ¹[of the
25 application of] in which¹ the tax credit allowed pursuant to this
26 section and any other tax credits allowed by law ¹may be taken¹
27 shall be as prescribed by the director. The amount of the tax credit
28 applied under this section against the tax otherwise due under the
29 “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., for a
30 taxable year, when taken together with any other payments, credits,
31 deductions, and adjustments allowed by law shall not reduce the tax
32 liability of the taxpayer to an amount less than zero. The amount of
33 the tax credit otherwise allowable under this section which cannot
34 be applied for the taxable year due to the limitations of this
35 subsection or under other provisions of N.J.S.54A:1-1 et seq., may
36 be carried forward, if necessary, to the seven taxable years
37 following the taxable year for which the tax credit was allowed.

38 d. (1) A business entity that is classified as a partnership for
39 federal income tax purposes shall not be allowed a tax credit
40 pursuant to this section directly, but the amount of tax credit of a
41 taxpayer in respect of a distributive share of entity income, shall be
42 determined by allocating to the taxpayer that proportion of the tax
43 credit acquired by the entity that is equal to the taxpayer's share,
44 whether or not distributed, of the total distributive income or gain
45 of the entity for its taxable year ending within or with the taxpayer's
46 taxable year.

1 (2) A New Jersey S Corporation shall not be allowed a tax credit
2 pursuant to this section directly, but the amount of tax credit of a
3 taxpayer in respect of a pro rata share of S Corporation income,
4 shall be determined by allocating to the taxpayer that proportion of
5 the tax credit acquired by the New Jersey S Corporation that is
6 equal to the taxpayer's share, whether or not distributed, of the total
7 pro rata share of S Corporation income of the New Jersey S
8 Corporation for its privilege period ending within or with the
9 taxpayer's taxable year.

10 ²A business entity that is not a gross income “taxpayer” as
11 defined and used in the “New Jersey Gross Income Tax Act,”
12 N.J.S.54A:1-1 et seq., and therefore is not directly allowed a credit
13 under this section, but otherwise meets all the other requirements of
14 this section, shall be considered an eligible applicant and “taxpayer”
15 as that term is used in this section, and the application of an
16 otherwise allowed credit amount shall be distributed to appropriate
17 gross income taxpayers pursuant to the other requirements of this
18 subsection.²

19 e. A taxpayer, with an application for a tax credit provided for
20 in subsection a. or subsection b. of this section, may apply to the
21 authority and the director for a tax credit transfer certificate in lieu
22 of the taxpayer being allowed any amount of the tax credit against
23 the tax liability of the taxpayer. The tax credit transfer certificate,
24 upon receipt thereof by the taxpayer from the authority and the
25 director, may be sold or assigned, in full or in part, to any other
26 taxpayer that may have a tax liability under the “New Jersey Gross
27 Income Tax Act,” N.J.S.54A:1-1 et seq., or the “Corporation
28 Business Tax Act (1945),” P.L.1945, c.162 (C.54:10A-1 et seq.), in
29 exchange for private financial assistance to be provided by the
30 purchaser or assignee to the taxpayer that has applied for and been
31 granted the tax credit. The tax credit transfer certificate provided to
32 the taxpayer shall include a statement waiving the taxpayer's right
33 to claim that amount of the tax credit against the tax imposed
34 pursuant to N.J.S.54A:1-1 et seq. that the taxpayer has elected to
35 sell or assign. The sale or assignment of any amount of a tax credit
36 transfer certificate allowed under this section shall not be
37 exchanged for consideration received by the taxpayer of less than
38 75 percent of the transferred tax credit amount. Any amount of a
39 tax credit transfer certificate used by a purchaser or assignee against
40 a tax liability under N.J.S.54A:1-1 et seq. shall be subject to the
41 same limitations and conditions that apply to the use of a tax credit
42 pursuant to subsections c. and d. of this section. Any amount of a
43 tax credit transfer certificate obtained by a purchaser or assignee
44 under this subsection e. may be applied against the purchaser's or
45 assignee's tax liability under P.L.1945, c.162 (C.54:10A-1 et seq.)
46 and shall be subject to the same limitations and conditions that
47 apply to the use of a credit pursuant to subsection c. of section 1 of
48 P.L. , c. (C.) (pending before the Legislature as this bill).

1 f. (1) The value of tax credits, including tax credits allowed
2 through the granting of tax credit transfer certificates, approved by
3 the director and the authority pursuant to subsection a. of this
4 section and pursuant to subsection a. of section 1 of P.L. ,
5 c. (C.) (pending before the Legislature as this bill) shall not
6 exceed a cumulative total of \$75,000,000 in fiscal year 2019 and in
7 each fiscal year thereafter prior to fiscal year 2024 to apply against
8 the tax imposed pursuant to the “New Jersey Gross Income Tax
9 Act,” N.J.S.54A:1-1 et seq., and pursuant to section 5 of P.L.1945,
10 c.162 (C.54:10A-5). If the cumulative total amount of tax credits,
11 and tax credit transfer certificates, allowed to taxpayers for taxable
12 years or privilege periods commencing during a single fiscal year
13 under subsection a. of this section and subsection a. of section 1 of
14 P.L. , c. (C.) (pending before the Legislature as this bill)
15 exceeds the amount of tax credits available in that fiscal year, then
16 taxpayers who have first applied for and have not been allowed a
17 tax credit or tax credit transfer certificate amount for that reason
18 shall be allowed, in the order in which they have submitted an
19 application, the amount of tax credit or tax credit transfer certificate
20 on the first day of the next succeeding fiscal year in which tax
21 credits and tax credit transfer certificates under subsection a. of this
22 section and subsection a. of section 1 of P.L. , c. (C.)
23 (pending before the Legislature as this bill) are not in excess of the
24 amount of credits available.

25 (2) The value of tax credits, including tax credits allowed
26 through the granting of tax credit transfer certificates, approved by
27 the authority and the director pursuant to subsection b. of this
28 section and pursuant to subsection b. of section 1 of P.L. ,
29 c. (C.) (pending before the Legislature as this bill) shall not
30 exceed a cumulative total of \$10,000,000 in fiscal year 2019 and in
31 each fiscal year thereafter prior to fiscal year 2024 to apply against
32 the tax imposed pursuant to the “New Jersey Gross Income Tax
33 Act,” N.J.S.54A:1-1 et seq. and the tax imposed pursuant to section
34 5 of P.L.1945, c.162 (C.54:10A-5). If the total amount of tax credits
35 and tax credit transfer certificates allowed to taxpayers for taxable
36 years or privilege periods commencing during a single fiscal year
37 under subsection b. of this section and subsection b. of section 2 of
38 P.L. , c. (C.) (pending before the Legislature as this bill)
39 exceeds the amount of tax credits available in that year, then
40 taxpayers who have first applied for and have not been allowed a
41 tax credit or tax credit transfer certificate amount for that reason
42 shall be allowed, in the order in which they have submitted an
43 application, the amount of tax credit or tax credit transfer certificate
44 on the first day of the next succeeding fiscal year in which tax
45 credits and tax credit transfer certificates under subsection b. of this
46 section and subsection b. of section 2 of P.L. , c. (C.)
47 (pending before the Legislature as this bill) are not in excess of the
48 amount of credits available.

1 g. A taxpayer shall submit to the authority and the director a
2 report prepared by an independent certified public accountant
3 licensed in this State to verify the taxpayer's tax credit claim
4 following the completion of the production. The report shall be
5 ²~~based on a compliance audit conducted~~ prepared² by the
6 independent certified public accountant pursuant to ²~~procedures~~
7 agreed upon by the taxpayer, the independent certified public
8 accountant, and the authority and the director ~~]~~ agreed upon
9 procedures prescribed by the authority and the director²; and shall
10 include such information and documentation as shall be determined
11 to be necessary by the authority and the director to substantiate the
12 qualified film production expenses or the qualified digital media
13 content production expenses of the taxpayer. Upon receipt of the
14 report, the authority and the director shall review the findings of the
15 independent certified public accountant's ²~~compliance audit~~
16 report², and shall make a determination as to the qualified film
17 production expenses or the qualified digital media content
18 production expenses of the taxpayer. The determination shall be
19 provided in writing to the taxpayer, and a copy of the written
20 determination shall be included in the filing of a return that includes
21 a claim for a tax credit allowed pursuant to this section.

22 h. A taxpayer shall withhold from each payment to a loan out
23 company or to an independent contractor an amount equal to 6.37
24 percent of the payment otherwise due. The amounts withheld shall
25 be deemed to be withholding of liability pursuant to the "New
26 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the
27 taxpayer shall be deemed to have the rights, duties, and
28 responsibilities of an employer pursuant to chapter 7 of Title 54A of
29 the New Jersey Statutes. The director shall allocate the amounts
30 withheld for a taxable year to the accounts of the individuals who
31 are employees of a loan out company in proportion to the
32 employee's payment by the loan out company in connection with a
33 trade, profession, or occupation carried on in this State or for the
34 rendition of personal services performed in this State during the
35 taxable year. A loan out company that reports its payments to
36 employees in connection with a trade, profession, or occupation
37 carried on in this State or for the rendition of personal services
38 performed in this State during a taxable year shall be relieved of its
39 duties and responsibilities as an employer pursuant to chapter 7 of
40 Title 54A of the New Jersey Statutes for the taxable year for any
41 payments relating to the payments on which the taxpayer withheld.

42 i. As used in this section:

43 "Authority" means the New Jersey Economic Development
44 Authority.

45 "Business assistance or incentive" means "business assistance or
46 incentive" as that term is defined pursuant to section 1 of P.L.2007,
47 c.101 (C.54:50-39).

1 “Commission” means the Motion Picture and Television
2 Development Commission.

3 “Digital media content” means any data or information that is
4 produced in digital form, including data or information created in
5 analog form but reformatted in digital form, text, graphics,
6 photographs, animation, sound ^{1,1} and video content. “Digital media
7 content” does not mean content offerings generated by the end user
8 (including postings on electronic bulletin boards and chat rooms);
9 content offerings comprised primarily of local news, events,
10 weather or local market reports; public service content; electronic
11 commerce platforms (such as retail and wholesale websites);
12 websites or content offerings that contain obscene material as
13 defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or
14 content that are produced or maintained primarily for private,
15 industrial, corporate ^{1,1} or institutional purposes; or digital media
16 content acquired or licensed by the taxpayer for distribution or
17 incorporation into the taxpayer's digital media content.

18 ¹“Eligible municipality” means a municipality in this State that
19 has experienced the closure of at least two casino hotel facilities
20 that had been licensed and operated, within the boundaries of the
21 municipality, in accordance with the laws of this State. ¹

22 “Film” means a feature film, a television series ^{1,1} or a television
23 show of 22 minutes or more in length, intended for a national
24 audience, or a television series or a television show of 22 minutes
25 or more in length intended for a national or regional audience,
26 including, but not limited to, a game show, award show, or other
27 gala event filmed and produced at a nonprofit arts and cultural
28 venue receiving State funding. “Film” shall not include a
29 production featuring news, current events, weather ^{1,1} and market
30 reports or public programming, talk show, sports event, or reality
31 show, a production that solicits funds, a production containing
32 obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-
33 3, or a production primarily for private, industrial, corporate ^{1,1} or
34 institutional purposes. “Film” shall not include ¹ [a game show,
35 an award show ¹ [,] ¹ or other gala event that is not filmed and
36 produced at a nonprofit arts and cultural venue receiving State
37 funding.

38 “Full-time or full-time equivalent employee” means an
39 individual employed by the taxpayer for consideration for at least
40 35 hours a week, or who renders any other standard of service
41 generally accepted by custom or practice as full-time or full-time
42 equivalent employment, whose wages are subject to withholding as
43 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1
44 et seq., or who is a partner of a taxpayer, who works for the
45 partnership for at least 35 hours a week, or who renders any other
46 standard of service generally accepted by custom or practice as full-
47 time or full-time equivalent employment, and whose distributive

1 share of income, gain, loss, or deduction, or whose guaranteed
2 payments, or any combination thereof, is subject to the payment of
3 estimated taxes, as provided in the “New Jersey Gross Income Tax
4 Act,” N.J.S.54A:1-1 et seq. “Full-time or full-time equivalent
5 employee” shall not include an individual who works as an
6 independent contractor or on a consulting basis for the taxpayer.

7 “Highly compensated individual” means an individual who
8 directly or indirectly receives compensation in excess of
9 ~~‘\$1,500,000’~~ \$500,000¹ for the performance of services used
10 directly in a production. An individual receives compensation
11 indirectly when the taxpayer pays a loan out company that, in turn,
12 pays the individual for the performance of services.

13 “Independent contractor” means an individual treated as an
14 independent contractor for federal and State tax purposes who is
15 contracted with by the taxpayer for the performance of services
16 used directly in a production.

17 “Loan out company” means a personal service corporation or
18 other entity that is contracted with by the taxpayer to provide
19 specified individual personnel, such as artists, crew, actors,
20 producers, or directors for the performance of services used directly
21 in a production. “Loan out company” does not include entities
22 contracted with by the taxpayer to provide goods or ancillary
23 contractor services such as catering, construction, trailers,
24 equipment, or transportation.

25 “Partnership” means an entity classified as a partnership for
26 federal income tax purposes.

27 “Post-production costs” means the costs of the phase of
28 production of a film that follows principal photography, in which
29 raw footage is cut and assembled into a finished film with sound
30 synchronization and visual effects.

31 “Pre-production costs” means the costs of the phase of
32 production of a film that precedes principal photography, in which a
33 detailed schedule and budget for the production is prepared, the
34 script and location is finalized, and contracts with vendors are
35 negotiated.

36 “Qualified digital media content production expenses” means an
37 expense incurred in New Jersey for the production of digital media
38 content. “Qualified digital media content production expenses”
39 shall include but shall not be limited to ¹;¹ wages and salaries of
40 individuals employed in the production of digital media content on
41 which the tax imposed by the “New Jersey Gross Income Tax Act,”
42 N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of
43 computer software and hardware, data processing, visualization
44 technologies, sound synchronization, editing, and the rental of
45 facilities and equipment. Payment made to a loan out company or
46 to an independent contractor shall not be a “qualified digital media
47 content production expense” unless the payment is made in
48 connection with a trade, profession, or occupation carried on in this

1 State or for the rendition of personal services performed in this
2 State and the taxpayer has made the withholding required by
3 subsection h. of this section. “Qualified digital media content
4 production expenses” shall not include expenses incurred in
5 marketing, promotion, or advertising digital media or other costs
6 not directly related to the production of digital media content.
7 Costs related to the acquisition or licensing of digital media content
8 by the taxpayer for distribution or incorporation into the taxpayer's
9 digital media content shall not be “qualified digital media content
10 production expenses.”

11 “Qualified film production expenses” means an expense incurred
12 in New Jersey for the production of a film including pre-production
13 costs and post-production costs incurred in New Jersey. “Qualified
14 film production expenses” shall include but shall not be limited to:
15 wages and salaries of individuals employed in the production of a
16 film on which the tax imposed by the “New Jersey Gross Income
17 Tax Act,” N.J.S.54A:1-1 et seq. has been paid or is due; and the
18 costs for tangible personal property used, and services performed,
19 directly and exclusively in the production of a film, such as
20 expenditures for film production facilities, props, makeup,
21 wardrobe, film processing, camera, sound recording, set
22 construction, lighting, shooting, editing, and meals. Payment made
23 to a loan out company or to an independent contractor shall not be a
24 “qualified film production expense” unless the payment is made in
25 connection with a trade, profession, or occupation carried on in this
26 State or for the rendition of personal services performed in this
27 State and the taxpayer has made the withholding required by
28 subsection h. of this section. “Qualified film production expenses”
29 shall not include: expenses incurred in marketing or advertising a
30 film; and payment in excess of ¹ ~~[\$1,500,000]~~ \$500,000 to a highly
31 compensated individual for costs for a story, script, or scenario used
32 in the production of a film and wages or salaries or other
33 compensation for writers, directors, including music directors,
34 producers, and performers, other than background actors with no
35 scripted lines.

36 “Total digital media content production expenses” means costs
37 for services performed and property used or consumed in the
38 production of digital media content.

39 “Total film production expenses” means costs for services
40 performed and tangible personal property used or consumed in the
41 production of a film.

42

43 3. Notwithstanding the provisions of the "Administrative
44 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
45 contrary, the New Jersey Economic Development Authority and the
46 Director of the Division of Taxation in the Department of the
47 Treasury may adopt immediately upon filing with the Office of
48 Administrative Law such rules and regulations as the authority or

1 the director shall determine to be necessary to effectuate the
 2 purposes of P.L. , c. (C.) (pending before the Legislature as
 3 this bill), which rules and regulation shall be effective for a period
 4 not exceeding 360 days following the effective date of
 5 P.L. , c. (C.) (pending before the Legislature as this bill)
 6 and may thereafter be amended, adopted, or readopted by the
 7 authority or the director in accordance with the requirements of
 8 P.L.1968, 1 c.410 (C.52:14B-1 et seq.).

9
 10 ³4. a. A taxpayer, upon approval of an application to the
 11 authority and the director, shall be allowed a credit against the tax
 12 imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5) in
 13 an amount equal to 2 percent of the qualified film or digital media
 14 content production expenses of the taxpayer during a privilege
 15 period commencing on or after July 1, 2018 but before July 1, 2023,
 16 provided that:

17 (a) the application is accompanied by a diversity plan outlining
 18 specific goals, which may include advertising and recruitment
 19 actions, for hiring minority persons and women;

20 (b) the director and the authority have approved the plan as
 21 meeting the requirements established by the director and the
 22 authority; and

23 (c) the director and the authority have verified that the applicant
 24 has met or made good-faith efforts in achieving those goals.

25 The director and the authority shall adopt any rules necessary to
 26 implement this provision.

27 The application shall indicate whether the applicant intends to
 28 participate in training, education, and recruitment programs that are
 29 organized in cooperation with State colleges and universities, labor
 30 organizations, and the motion picture industry and are designed to
 31 promote and encourage the training and hiring of New Jersey
 32 residents who represent the diversity of the State population.³

33
 34 ³[~~4.~~] ~~5.~~³ The following sections are repealed:

35 Sections 1 and 2 of P.L.2005, c.345 (C.54:10A-5.39 and
 36 C.54A:4-12); and

37 Sections 2 and 3 of P.L.2010, c.20 (C.54:10A-5.39a and
 38 C.54A:4-12a).¹

39
 40 ¹[~~4.~~] ³[~~5.~~¹] ~~6.~~³ This act shall take effect immediately.

41
 42
 43
 44 Provides corporation business tax and gross income tax credit for
 45 certain expenses incurred for production of certain films and digital
 46 media content; designated as Garden State Film and Digital Media
 47 Jobs Act.